

# **EXHIBIT 13**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

MAY 21, 2004

A-00120637

TO ALL PARTIES

Application of the Buffalo & Pittsburgh Railroad, Inc., f/k/a Allegheny & Eastern Railroad, Inc., for approval of the suspension of crossings where the track of its A & E Subdivision crosses twelve (12) public highways, at grade, between Mileposts 131.0 and 149.9 in the City of St. Marys, Elk County and in Shippen Township and the Borough of Emporium, Cameron County.

To Whom It May Concern:

This matter is before the Commission upon an application filed April 12, 2004 by the Buffalo & Pittsburgh Railroad, Inc. (BPRR) seeking approval to suspend twelve (12) crossings where the single track of its A & E Subdivision crosses, at grade, public highways in Elk and Cameron Counties, identified as follows:

Elk County

<u>Crossing No.</u>	<u>Highway</u>	<u>DOT No.</u>	<u>Municipality</u>
1	Jackson Road	505 717 H	City of St. Marys
2	West Creek Rd. (S. R. 1008)	505 718 P	City of St. Marys

Cameron County

<u>Crossing No.</u>	<u>Highway</u>	<u>DOT No.</u>	<u>Municipality</u>
3	Beechwood Road (S. R. 4002)	505 719 W	Shippen Township
4	Beechwood Road (S. R.4002)	505 720 R	Shippen Township

5	S.R. 0120	505 721 X	Shippen Township
6	Moore Hill Road (S. R. 3001)	505 722 E	Shippen Township
7	Hercules Road (T-345)	505 723 L	Shippen Township
8	Industrial Road	unknown	Shippen Township
9	Airport Road	unknown	Shippen Township
10	Maple Street	505 724 T	Borough of Emporium
11	Broad Street (S. R. 3001)	505 725 A	Borough of Emporium
12	Pine Street	505 726 G	Borough of Emporium

In its application, BPRR proposes to suspend the crossings by removal of the rails, ties and other railroad material from the crossings and restore the roadway paving. The highway-rail grade crossing (crossbuck) signs, signals and posts will also be removed. The bases will be removed to a point below existing ground surface and replaced with material conforming with the adjacent material. The highway-rail grade crossing advance warning signs and pavement markings will also be removed.

A field conference was held at the site of the crossings on April 23, 2004 with representatives of the Department of Transportation of the Commonwealth of Pennsylvania (Department), BPRR, Borough of Emporium (Borough), Shippen Township (Township), City of St. Mary's (City), National Fuel Gas, County of Cameron and West Creek Recreational Trail Association, Inc. in attendance. County of Elk, Mid Cameron Authority, Allegheny Power, Adelphia, Emporium Water Company and Alltel Communications, Inc. were notified of the time and place of the conference but did not attend.

At the field conference, it was noted that Crossing No. 1 (Jackson Road) is a narrow two (2) lane stone paved city street. The crossing also consists of a stone surface. There are no warning devices located at the crossing nor highway-rail grade crossing advance warning signs on the approach roadways.

Crossings No. 2 (West Creek Road) and 6 (Moore Hill Road) are two (2) lane bituminous paved state highways with adjacent narrow shoulders. The crossings consist of timber/asphalt paved surfaces equipped with highway-rail grade (crossbuck) signs. There are highway-rail grade crossing advance warning signs, stop lines and pavement markings on the approach roadways.

The two (2) crossings of Beechwood Road, Crossings No. 3 and 4, are two (2) lane bituminous paved state highways with adjacent shoulders. The crossings consist of Nelson rail chair and asphalt paved surfaces equipped with highway-rail grade crossing (crossbuck) signs. There are highway-rail grade crossing advance warning signs, stop lines and pavement markings on the approach roadways.

Crossing No. 5 (S R. 0120) is a two (2) lane bituminous paved state highway with adjacent paved shoulders. The crossing consists of a timber/asphalt paved surface equipped with post-mounted flashing-light signals. There are highway-rail grade crossing advance warning signs, stop lines and pavement markings on the approach roadways.

Crossing No. 7 (Hercules Road) is a two (2) lane bituminous paved township road. The crossing consists of a timber/asphalt paved surface equipped with highway-rail grade crossing (crossbuck) signs. There are no highway-rail grade crossing advance warning signs nor pavement markings on the approach roadways.

Crossings No. 8 (Industrial Road) and 9 (Airport Road) are two (2) lane bituminous paved borough highways (within Shippen Township). The crossings consist of high-type concrete surfaces equipped with highway-rail grade crossing (crossbuck) signs and STOP signs. There are highway-rail grade crossing advance warning signs, STOP AHEAD signs and stop lines on the approach roadways.

Crossing No. 10 (Maple Street) is a two (2) lane bituminous paved borough street. The crossing consists of a timber/asphalt paved surface equipped with post-mounted flashing-light signals. There are no highway-rail grade crossing advance warning signs nor pavement markings on the approach roadways.

Crossing No. 11 (Broad Street) is a wide two (2) lane bituminous paved state highway with adjacent sidewalks. The crossing consists of a Nelson rail chair and asphalt paved surface equipped with cantilevered mounted flashing-light signals. There are highway-rail grade crossing advance warning signs, stop lines and pavement markings on the approach roadways.

Crossing No. 12 (Pine Street) is a narrow two (2) lane bituminous paved borough street. The crossing consists of a Nelson rail chair and asphalt paved surface equipped with highway-rail grade crossing (crossbuck) signs. There are no highway-rail grade crossing advance warning signs nor pavement markings on the approach roadways.

The BPRR agreed to remove the rails and ties from the crossing areas and repave the areas of the track removal at its sole cost and expense. The BPRR also agreed to remove the highway-rail grade crossing (crossbuck) signs, flashing-light signals, signal bases and other associated railroad materials from the crossing areas. The BPRR agreed to remove the base of the cantilevered mounted flashing-light signals located at the east side of the south approach of Broad Street to a minimum depth of approximately one (1) foot below existing ground.

The Department and Borough agreed to remove the highway-rail grade crossing advance warning signs, STOP signs, STOP AHEAD signs, stop lines and pavement markings

from their respective approach roadways, at their sole cost and expense. The City, Township, Department and Borough also agreed to maintain their respective roadways through the areas of the former crossings.

BPRR plans to begin track removal operations at the subject crossings during late spring of 2004 and expects completion by December 31, 2004.

No one at the field conference objected to the suspension of the subject crossings.

It does not appear that facilities of non-carrier public utilities will be affected by the suspension of the subject crossings. National Fuel Gas agreed to protect or alter its facilities to accommodate construction, at its initial cost and expense. The BPRR agreed to contact Pennsylvania One Call prior to construction.

The Commission hereby establishes its jurisdictional limits at the subject crossings as the area within the confines of the railroad right-of-way and the highway right-of-way.

Upon full consideration of the matters involved and inasmuch as all parties are in agreement with the proposed suspension of the subject crossings, we find that a Secretarial Letter can be issued approving the suspensions without a formal hearing.

The Commission issues this Secretarial Letter in accordance with Section 2702 of the Public Utility Code and finds that the suspension of the subject crossings is necessary and proper for the service, accommodation, convenience, or safety of the public.

The application of Buffalo & Pittsburgh Railroad, Inc., f/k/a Allegheny & Eastern Railroad, Inc., is approved as herein directed:

1. The caption of the subject proceeding is hereby revised as shown herein.
2. The subject crossings numbered 1 thru 12 which cross, at grade, a single track of the Buffalo & Pittsburgh Railroad, Inc., f/k/a Allegheny & Eastern Railroad, Inc., located in the City of St. Marys, Elk County and Shippen Township and the Borough of Emporium, Cameron County, be and are hereby suspended.
3. Buffalo & Pittsburgh Railroad, Inc., at its sole cost and expense, furnish all material and do all work necessary to suspend the subject at-grade crossings by 1) removing the rails, ties, highway-rail grade crossing (crossbuck) signs, post and cantilevered mounted flashing-light signals, signal bases, signal cabinets, battery boxes and ancillary features, and 2) repaving the areas disturbed by the track removal with suitable material conforming with the state, city, township and borough roadway specifications and providing a smooth surface through the former crossing areas and smooth transitions to the abutting roadway surfaces.
4. Pennsylvania Department of Transportation and the Borough of Emporium, at their sole cost and expense, concurrently with the work performed in Numbered

Paragraph 3 of this letter, furnish all material and do all work necessary to suspend the subject twelve (12) crossings by removing from their respective roadway approaches the highway-rail grade crossing advance warning signs, STOP signs, STOP AHEAD signs, stop lines and pavement markings.

5. Buffalo & Pittsburgh Railroad, Inc., at its sole cost and expense and in cooperation with the City of St. Marys, Shippen Township, Borough of Emporium and the Pennsylvania Department of Transportation, furnish all material and do all work necessary to establish and maintain any detours or traffic controls that may be necessary to properly and safely accommodate highway and pedestrian traffic during the time the crossings are being suspended.

6. Any relocation of, changes in and/or removal of any adjacent structures, equipment or facilities of any non-carrier public utility, which may be required as incidental to the suspension of the crossings, be made by said public utility at its initial cost and in such a manner as will not interfere with the suspension of the crossings; and such relocated or altered facilities thereafter be maintained by said public utility at its sole cost and expense.

7. Buffalo & Pittsburgh Railroad, Inc. notify all parties of record at least fourteen (14) days prior to performing any work in accordance with this letter.

8. All parties involved herein cooperate fully with each other so that during the time the work is being performed, vehicular and pedestrian traffic will not be endangered or unnecessarily inconvenienced and said requirements of each of the parties will be provided for and accommodated insofar as possible.

9. All work necessary to complete the suspension of the crossings be done in a manner satisfactory to this Commission on or before December 31, 2004, and that on or before said date, Buffalo & Pittsburgh Railroad, Inc. report to this Commission in writing the date of actual completion of the work.

10. Buffalo & Pittsburgh Railroad, Inc. pay all compensation for damages, if any, due to the owners of property taken, injured or destroyed by reason of the suspension of the subject crossings in accordance with this letter.

11. Upon completion of the work to suspend the Jackson Road at-grade crossing, City of St. Marys, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the area of its roadway formerly occupied by the track.

12. Upon completion of the work to suspend the Hercules Road (T-345) at-grade crossing, Shippen Township, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the area of its roadway formerly occupied by the track.

13. Upon completion of the work to suspend the Industrial Road, Airport Road, Maple Street and Pine Street at-grade crossings, Borough of Emporium, at its sole cost and

expense, furnish all material and do all work necessary thereafter to maintain the areas of its roadways formerly occupied by the track.

14. Upon completion of the work to suspend the West Creek Road (S. R. 1008), Beechwood Road (S. R. 4002) (two crossings), S. R. 0120, Moore Hill Road (S. R. 3001) and Broad Street (S. R. 3001) at-grade crossings, Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the areas of its roadways formerly occupied by the track.

15. Elk County, Cameron County, Borough of Emporium, City of St. Marys, Shippen Township and the Pennsylvania Department of Transportation shall apply and/or cause to have the entity altering any of the subject crossings, apply to the Commission for approval to alter the suspended crossings that involve the roadway under their jurisdiction prior to the alteration taking place. Alteration of the crossing includes installation or removal of any fixed utility facilities at the suspended subject crossings.

16. Elk County, Cameron County, Borough of Emporium, City of St. Marys, Shippen Township and the Pennsylvania Department of Transportation understand that failure to apply and/or cause to have the entity altering the crossing apply to the Commission for approval to alter any of the suspended crossings will be a violation of the Public Utility Code.

17. This Secretarial Letter is without prejudice to the railroad's right to reactivate the subject line at the subject listed crossings numbered 1 thru 12 upon due notice to all parties of record and to the Commission by application.

18. Upon completion of the work herein directed, and upon written request from any party of record, this proceeding be scheduled for a hearing at a time and place to be determined by the Commission, for the purpose of taking testimony upon the final allocation of any costs incurred by any non-carrier utility companies and other matters relevant to this proceeding.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §5.44, file a petition with the Commission within ten (10) days of the date of this letter.

Very truly yours,

James J. McNulty  
Secretary